IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 6TH JULY 2007 / 15TH ASHADHA 1929

Crl.MC.No. 1914 of 1998(D)

S.T.NO.287/98 OF JFCM, CHAVAKKAD

PETITIONER:

C.L.ANTO, CHALAKKAL HOUSE
MAMMIYUR P.O., GURUVAYOOR
PIN 680101.

BY ADV. PARTY IN PERSON
SRI.RANJIT BABU

RESPONDENTS:
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1. LONAPPAN
S/O.CHALAKKAL DEVASSY
CHALAKKAL HOUSE
MAMMIYUR, GURUVAYOOR
TRICHUR DISTRICT.

2. STATE OF KERALA, REPRESENTED BY CHIEF SECRETARY
GOVT. SECRETARIAT, TRIVANDRUM.

3. V.V.SASIKUMAR, CIRCLE INSPECTOR OF POLICE
KUNNAMKULAM, TRICHUR.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI
SMT.GIGI MATHEW

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 06/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.M.C.No.1914 of 1998

Dated this the 6th day of July, 2007

O R D E R

The petitioner is the first accused in S.T.No.287/98 in the court of the JFCM, Chavakkad with respect to the offence under Sections 447 and 323 read with Section 34 IPC on the allegation that the accused in furtherance of their common intention, trespassed into the residential compound of the defacto complainant and assaulted him.

2. The petitioner has sought for setting aside the above proceedings alleging that the case is a false one, foisted on account of personal enmity. A number of litigations are in existence in between the petitioner and the defacto complainant. He has also produced in the judgment in C.C.No.220/97 in which the petitioner was the defacto complainant and the accused that therein the accused including the defacto complainant in the present case were convicted for the offence under Section 323 read with Section 34 IPC and the same was confirmed in appeal. I find that the above incident covered by C.C.No.220/97 has

allegedly taken place on the same day at 10.30 a.m. The allegation raised therein is that the incident has taken place at 9.30 a.m. It is seen that the defacto complainant in the present case i.e, C.C.No.220/97 got admitted in the hospital at 10 a.m. on the same day. It is seen from the C.D. that the defacto complainant in the present case was admitted in the hospital at 10 a.m. on 25.1.1997 on the date of the incident and he was admitted as an inpatient. Evidently the allegation in C.C.No.220/97 is that the incident took place at 10.30 a.m. The same was found true and the same was confirmed. Hence, the version in the present case that he was admitted in the hospital at 10 a.m. cannot be true. Further more it is seen that the FIS was recorded on the next day on 26.1.1997 at 4.30 p.m. It appears that the facts was found true in C.C.No.220/97 and hence the case that the defacto complainant who was the first accused in C.C.No.220/97 was admitted in the hospital at 10.30 a.m. on 25.1.1997 cannot go together. It appears that the present proceedings initiated against the petitioner herein is based on incorrect facts. Hence, the proceedings initiated and

pending before the JFCM, Chavakkad as S.T.No.287/98 is herewith set aside.

The Criminal M.C. is allowed.

K.R.UDAYABHANU,
JUDGE

csl